

**FILED**

NOV 22 2005

RICHARD W. WIERING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PROTEGO NETWORKS, INC., a Delaware  
corporation

No. C 05-00464 MJJ

Plaintiff,

**ORDER re REQUEST TO AMEND  
PRIOR ORDER**

v.

DANIEL ZENCHELSKY,

Defendant.

On October 24, 2005, the parties filed a joint letter requesting that the Court modify a sentence in its Order on Plaintiff/Counterdefendants' Motion to Dismiss regarding the nature of Mr. Zenchelsky's position when he began working with the Protego group. The parties indicate that the language may be construed as having "the appearance of a finding of fact endorsed by this Court." Because the Court does not make factual findings when resolving a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), nothing in the Background section of the Court's Order shall be construed as a finding of fact or have such effect during later stages of this litigation. The Court therefore finds no basis to modify its prior Order. Accordingly, the Court **DENIES** the parties' request.

**IT IS SO ORDERED.**

Dated: 11 / 22 / 2005

  
MARTIN J. JENKINS  
UNITED STATES DISTRICT JUDGE